



**New Mexico State Legislature
Corrections Oversight and Justice Committee**

**2006
INTERIM REPORT**

CONTENTS

Work Plan, Meeting Schedule & Budget

Agendas

Minutes

Legislative Proposals

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CONTENTS

Work Plan and Meeting Schedule

Agendas

Minutes

Legislative Proposals

Work Plan and Meeting Schedule

2006 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE

Membership

The Courts, Corrections and Justice Committee was created by the Legislative Council on May 9, 2006. The committee members are:

Rep. Joseph Cervantes, Co-Chair
Sen. Cisco McSorley, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Gail Chasey
Sen. Carroll H. Leavell
Sen. Richard C. Martinez

Rep. Al Park
Sen. Lidio G. Rainaldi
Sen. H. Diane Snyder
Sen. Leonard Tsosie
Rep. Peter Wirth
Rep. Eric A. Youngberg

Advisory Members

Sen. Ben D. Altamirano
Rep. Hector H. Balderas
Sen. Kent L. Cravens
Sen. Mary Jane M. Garcia
Sen. John T.L. Grubestic
Sen. Clinton D. Harden, Jr.
Sen. Gay G. Kernan
Sen. Linda M. Lopez
Rep. W. Ken Martinez
Sen. Gerald Ortiz y Pino

Sen. William H. Payne
Rep. Jane E. Powdrell-Culbert
Rep. Bill Rehm
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart
Rep. Thomas E. Swisstack
Sen. James G. Taylor

Work Plan

During the 2006 interim and as time permits, the committee proposes to:

- (1) hear presentations from the judiciary, including reports on operations, projects, committees, specialized courts, budget and recommended legislation;
- (2) oversee and monitor issues relating to corrections, correctional facilities, probation and parole and state and county prisoners;
- (3) examine criminal justice and public safety issues, including those relating to criminal laws and procedures, the public defender, district attorneys and law enforcement;

(4) examine juvenile and youth issues, programs and services, including facilities, mental health and development, probation and parole and community and statewide initiatives;

(5) study and address issues relating to the crime of identity theft;

(6) explore the impact of the federal Real ID Act of 2005;

(7) review recommendations from the governor's task force on ethics reform and ethics reform legislation;

(8) examine separation of powers issues in payday loan regulation;

(9) look at problems with title insurance;

(10) examine related issues as appropriate; and

(11) recommend legislation or changes in existing law to the legislature.

2006 APPROVED MEETING SCHEDULE

June 7	Santa Fe
July 17-18	Farmington
August 10-11	Rio Rancho/Albuquerque
September 14-15	Las Cruces
October 19-20	*Hobbs
November 16-17	Santa Fe

*The committee is requesting a meeting outside the state capitol after September 30 (Interim Committee Policies 3(B)).

Agendas

Revised: June 6, 2006

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**June 7, 2006
Room 307, State Capitol**

Wednesday, June 7

10:00 a.m.

Call to Order

—Senator Cisco McSorley and Representative Joseph Cervantes,
Co-chairs

10:05 a.m.

Overcrowding at the Women's Correctional Facility

—Maureen A. Sanders, Attorney for the American Civil
Liberties Union and the New Mexico Women's Justice
Project

Overcrowding: Response and Solutions

—Jolene Gonzales, Acting Secretary, NM Corrections Department
(NMCD)
—James R. Brewster, Chief Deputy General Counsel, NMCD
—Erma Sedillo, Deputy Secretary of Operations, NMCD
—Elmer Bustos, Director of Adult Prisons, NMCD

11:30 a.m.

2006 Interim Work Plan and Meeting Schedule Development

—Committee Members and Staff

1:00 p.m.

Adjourn

Revised: July 14, 2006

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**July 17, 2006
San Juan College
4601 College Boulevard
Farmington**

**July 18, 2006
San Juan County DWI Facility
1006 Municipal Drive
Farmington**

Monday, July 17

- 10:00 a.m. **Call to Order**
—Senator Cisco McSorley and Representative Joseph Cervantes,
Co-chairs
- 10:05 a.m. **Approval of Minutes**
- 10:10 a.m. **Welcoming Remarks**
—Dr. Carol Spencer, President, San Juan College
—Mayor William Standley, City of Farmington
- 10:15 a.m. **Overview of Identity Theft Laws, Identity Theft Passport and
Security Freeze Legislation**
—Heather Morton, Senior Policy Specialist, National Conference of State
Legislatures
- Remarks on Security Freeze**
—Michelle Jun, Staff Attorney, Consumers Union
—Eric Rosenberg, Director, State Government Relations, TransUnion
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Methamphetamine Use and Identity Theft**
—Mark Drebing, Deputy District Attorney, Second Judicial District
—Sylvia M. Martinez, Deputy District Attorney, Second Judicial District
—Brian McGuire, Detective, White Collar Crime Unit, APD

- 2:30 p.m. **Funding for Civil Legal Services**
—The Honorable Edward L. Chavez, New Mexico Supreme Court Justice
—Sarah M. Singleton, Chair, Civil Legal Services Commission
—Kathleen Brockel, Executive Director, Law Access New Mexico
—Terence Gurley, Managing Attorney, DNA People's Legal Services,
Inc.
—Fernando Macias, Executive Director, New Mexico Legal Aid
- 4:00 p.m. **San Juan Safe Communities Initiative**
—Senator Steven P. Neville
—James C. Henderson, Ph.D., Chair, Board of County Commissioners of
San Juan County
—Lindy Bennett, District Attorney, Eleventh Judicial District
- 4:45 p.m. **Public Comment**
- Recess**

Tuesday, July 18

- 9:00 a.m. **DWI Update: Statistical Trends, New Programs, Persistent Problems
and Proposed Solutions**
—Rachel O'Connor, DWI Coordinator, Office of the Governor
—Michael Sandoval, Traffic Safety Bureau, Department of Transportation
- 11:00 a.m. **DWI in San Juan County**
—Judge John A. Dean, Jr., Eleventh Judicial District Court (tentative)
—Judge William Liese, Farmington Municipal Court
—Judge William A. Vincent, San Juan County Magistrate
—Robert V. Mitchell, Director, San Juan County DWI
Facility, Administrator, Alternative Sentencing Division
—Keith McPheeters, Sgt., Farmington Police Department
- 12:00 noon **Tour of the San Juan County DWI Facility**
—Robert V. Mitchell, Director, San Juan County DWI
Facility, Administrator, Alternative Sentencing Division
- Adjourn**

Revised: August 8, 2006

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**August 10, 2006
2003 Southern Blvd., Suite 132
Destiny Center
Rio Rancho**

**August 11, 2006
Student Union Building, Ballroom C
University of New Mexico
Albuquerque**

Thursday, August 10

- 10:00 a.m. **Call to Order**
—Senator Cisco McSorley and Representative Joseph Cervantes,
Co-Chairs
- 10:05 a.m. **Approval of Minutes**
- 10:10 a.m. **Juvenile Detention Alternatives Initiative**
—Nicole Morleand, Ph.D., Researcher and Statistician, Bernalillo County
—Douglas Mitchell, Coordinator, Juvenile Detention Alternative Initiative
- Youth Served by Detention Alternatives**
—Robert Krogman
—Chris Harris
—Paul Anaya
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Juvenile Justice Continuum Alliance**
—Judge Barbara J. Vigil, First Judicial District Court
—Jack Ortega, Coordinator, Juvenile Justice Continuum Alliance

2:30 p.m.

Restorative Justice Programs

- Thom Alena, Restorative Justice Trainer, Innovations in Justice
- Bernadette Lauritzen, Coordinator, Los Alamos County Restorative Justice Project
- Darrell Gassaway, Coordinator, Lincoln County Restorative Justice Project

3:15 p.m.

Update on Juvenile Justice and the New Mexico Boys' School

- Roger Gillespie, Juvenile Justice Services Director, Children, Youth and Families Department (CYFD)
- Ted Lovato, Deputy Director of Field Services, Juvenile Justice Services, CYFD

Public Comment

Recess

Friday, August 11

9:00 a.m.

Election Day Registration

- Matt Brix, Executive Director, Common Cause New Mexico
- Larry W. Ghan, County Commissioner, Bannock County, Idaho

Response from State Officials

11:00 a.m.

Liquor Control Act: Recommendations of Task Force and Proposed Regulations

- Arturo L. Jaramillo, Secretary of General Services, and Chair, Liquor Control Task Force

Enforcement of Regulations

- Ray Sisneros, Director, Special Investigations Division, Department of Public Safety (DPS)
- Jim Plagens, Deputy Director, Special Investigations Division, DPS

Response from Business Associations

- Joe Nestor Chavez, American Beverage Institute and New Mexico Grocers Association
- Carol Wight, New Mexico Restaurant Association

Public Comment

Adjourn

Revised: September 12, 2006

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**September 14-15, 2006
NMSU Golf Course Club House
3000 Champions Drive
Las Cruces**

Thursday, September 14

- 10:00 a.m. **Call to Order**
—Representative Joseph Cervantes and Senator Cisco McSorley,
Co-Chairs
- 10:05 a.m. **Approval of Minutes**
- 10:07 a.m. **Welcoming Remarks**
—Dr. Michael V. Martin, President, NMSU
- 10:10 a.m. **Surface Owners Protection Act**
—Representative Andy Nunez
—Bruce Baizel, Oil and Gas Accountability Project
—Alisa Ogden, New Mexico Cattlegrowers Association
—Bob Gallagher, President, New Mexico Oil and Gas Association
- 11:00 a.m. **New Mexico Women's Justice Project: Incarceration vs. Treatment
and Other Issues**
—Maureen A. Sanders, President, New Mexico Women's Justice Project
—Angie Vachio, Vice President, New Mexico Women's Justice Project
- 12:30 p.m. **Lunch**
- 1:30 p.m. **The Role of the Judicial Standards Commission**
—Richard C. Bossom, Chief Justice, New Mexico Supreme Court
- Enforcing the Code of Judicial Conduct**
—James A. Noel, Executive Director and General Counsel, Judicial
Standards Commission
—David Smoak, Chair, Judicial Standards Commission
—Gloria Taradash, Ph.D., Vice Chair, Judicial Standards Commission

—Justice Dan Sosa, Jr. (Retired), Member, Judicial Standards Commission

Practicing Before the Judicial Standards Commission: A Lawyer's Perspective

—Lawrence R. White, Attorney, Miller Stratvert P.A.

—Joleen K. Youngers, Attorney, Almanzar and Youngers P.A.

3:00 p.m.

Border Security: Operation Safe Border

—Tim Manning, Homeland Security Advisor and Office of Emergency Management Director, Department of Public Safety

—Richard Williams, Captain, New Mexico State Police

—James Morgan, Colonel, New Mexico National Guard

—Todd Garrison, Doña Ana County Sheriff

—Raymond Cobos, Undersheriff, Luna County Sheriff's Office

Experiences of Border Communities

—Elizabeth Camargo, Program Coordinator, Border Network for Human Rights

—Kathleen Erickson, RSM, Sisters of Mercy and Desert Humanitarians

—Marcela Diaz, Executive Director, Somos Un Pueblo Unido

4:30 p.m.

Public Comment

Recess

Friday, September 15

9:00 a.m.

Problems with Eyewitness Identification Testimony

—Michael Stout, New Mexico Criminal Defense Lawyers Association

9:45 a.m.

The REAL ID Act of 2005: Requirements, Implementation and Options Available to States

—Kenneth Ortiz, Director, Motor Vehicle Division, Taxation and Revenue Department

—Matt Sundeen, Transportation Program Principal, National Conference of State Legislatures

—Jim Harper, Director of Information Policy Studies, The Cato Institute

—Christopher Calabrese, Counsel, Technology and Liberty Project, American Civil Liberties Union

—Tyler Moran, Policy Analyst, National Immigration Law Center

12:30 p.m.

Public Comment

Adjourn

Revised: October 16, 2006

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**October 19-20, 2006
Moran Multipurpose Room, New Mexico Junior College
5317 Lovington Highway, One Thunderbird Circle
Hobbs**

Thursday, October 19

- 10:00 a.m. **Call to Order**
—Senator Cisco McSorley and Representative Joseph Cervantes,
Co-Chairs
- 10:05 a.m. **Approval of Minutes**
- 10:10 a.m. **Welcoming Remarks**
—Harry Teague, Chair, Board of Lea County Commissioners
- 10:15 a.m. **New Mexico Sentencing Commission:**
• **Workload Study**
• **Compensation to Counties for Housing Felony Offenders**
• **Proposal for New or Increased Penalties**
—Mike Hall, Executive Director
—Tony Ortiz, Deputy Director
—Randall Cherry, Senior Counsel
—Paul Guerin, Ph.D., Senior Research Scientist
- 11:45 a.m. **Update on Implementation of Katie's Law**
—John Krebsbach, Chair, DNA Oversight Committee
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Fifth Judicial District Court: Welcome and Update**
—Gary L. Clingman, Chief Judge, Fifth Judicial District
- 1:45 p.m. **Report from the Judiciary: Unified Budget and Proposed Legislation**
—Edward L. Chavez, Justice, New Mexico Supreme Court
—Michael D. Bustamante, Chief Judge, Court of Appeals
—James J. Wechsler, Judge, Court of Appeals
—Arthur W. Pepin, Director, Administrative Office of the Courts
—Gina Maestas, Chief Clerk, Court of Appeals

3:45 p.m. **Public Comment**

4:00 p.m. **Tour of Lea County Correctional Facility**

Recess

Friday, October 20

9:00 a.m. **New Mexico Corrections Department:**

- **Overcrowding —Present and Future; Population Control Commission**
- **Provision and Oversight of Medical and Mental Health Services**
- **Camino Nuevo Update and Transition**
- **Springer Transition**
- **Clayton Prison Update**

—Joe Williams, Secretary, New Mexico Corrections Department

(NMCD)

—Erma Sedillo, Deputy Secretary of Operations, NMCD

—Jolene Gonzales, Deputy Secretary of Administration, NMCD

—Mark Hale, President and CEO, Wexford Health Sources, Inc.

—Mike Running, Clayton City Manager

Oversight in Population Control, Springer and Camino Nuevo Transitions, Inmate Health Care and Other Issues

—Diane Wood, Women's Justice Project Administrator

—George Bach, American Civil Liberties Union Staff Attorney

—Angela Baker Billings, LPN, Former Discharge Planner, Central New Mexico Correctional Facility (CNMCF)

—Linda Martinez, Former Administrative Assistant, Medical Records, Lea County Correctional Facility

—Norbert Sanchez, RN, Former Staff Nurse, Long-Term Care Unit, CNMCF

Public Comment

Adjourn

Revised: November 14, 2006

**TENTATIVE AGENDA
for the
SIXTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**November 15-17, 2006
Room 311, State Capitol**

Wednesday, November 15

- 10:00 a.m. **Call to Order**
—Senator Cisco McSorley and Representative Joseph Cervantes,
 Co-Chairs
- Approval of Minutes**
- 10:10 a.m. **Elections: Voter Fraud**
—David Iglesias, United States Attorney (Invited)
—Representative Justine Fox-Young (Invited)
- 10:30 a.m. **Elections: Deposits for Recounts**
—Ernie Marquez, Director, Bureau of Elections
- 11:00 a.m. **Elections: Voting Machine Audit Procedures (Bill Draft #1); Election
Day Registration (Bill Draft #29)**
—Paul Stokes, Coordinator, United Voters of New Mexico
—Steve Fetting, Verified Voting New Mexico
- Working Lunch**
- 1:00 p.m. **Separation of Powers: Legislation and Rulemaking**
—Michael Browde, Professor, UNM School of Law
- 2:15 p.m. **Use of Eminent Domain**
—J.D. Bullington, Co-Chair, Governor's Task Force on the Responsible
 Use of Eminent Domain (Task Force)
—John Salazar, Co-Chair, Task Force
—Walter Bradley, Member, Task Force
—Bill Fulginiti, Member, Task Force
- 4:00 p.m. **Administrative Procedures Reform**
—T.J. Trujillo, Lobbyist, Regulatory Justice
- Recess**

Thursday, November 16

- 9:00 a.m. **Report and Recommendations from the Governor's Task Force on Ethics Reform**
—Governor Garrey Carruthers, Co-Chair
—Suellyn Scarnecchia, Co-Chair, Dean, UNM Law School
- 11:00 a.m. **Governor's Legislative Proposals (Bill Drafts #G1-G7)**
—John Wheeler, Chief Counsel, Department of Public Safety
—Sandra Gardner, Domestic Violence Coordinator
—Herman Silva, Drug Czar
—James R. Brewster, Chief Deputy General Counsel, Corrections Department
- 12:00 noon **Lunch**
- 1:30 p.m. **Uniform Law Commission: Proposed Legislation (Bill Drafts #2-6)**
—John P. Burton, Uniform Law Commissioner
- 3:00 p.m. **Mediation Procedures Act (Bill Draft #7)**
—David Levin, Court Alternatives Director, Second Judicial District
- 3:30 p.m. **Children's Mental Health and Developmental Disabilities Act Revisions**
—Dorian Dodson, Secretary-Designate, Children, Youth and Families Department
- 4:15 p.m. **Report from the Governor's Commission on the Welfare of Children of Jailed and Incarcerated Parents (Bill Drafts #8-9)**
—Dorian Dodson, Secretary-Designate, Children, Youth and Families Department
—Angie Vachio, Co-Chair, Commission on the Welfare of Children of Jailed and Incarcerated Parents
- Recess**

Friday, November 17

- 9:00 a.m. **Creating a Public Defender Commission (Bill Draft #10)**
—Homer Robinson, Project Manager, NM Coalition for Justice
—Jacquelyn Robins, Former Chief Public Defender
—Henry R. Quintero, Judge, Sixth Judicial District Court
—Emmet Bondurant, Chair, Georgia Public Defender Standards Commission

- 10:15 a.m. **Contract Attorney Fees in Death Penalty Cases (Bill Draft #11);
Clarify School Zone in Controlled Substances Act (Bill Draft #12)**
—Melissa Hill, Co-Chair, Indigent Defense Committee, New Mexico
Criminal Defense Lawyers Association
—Bennett Baur, Co-Chair, Legislative Committee, NMCDLA
- 10:30 a.m. **Qui Tam Legislative Proposal (Bill Proposal #32)**
—Maureen Sanders, Qui Tam Attorney
—Frances Williams, Commissioner, Region 7 Housing Authority
- 11:30 a.m. **Juvenile Continuum Grant Fund (Bill Draft #13)**
—Representative Jeannette O. Wallace
- 12:00 noon **Working Lunch**
Proposals on Insurance Fraud Penalties (Bill Drafts #14-15)
—Phyllis Bowman, Assistant Prosecutor, NM Insurance Fraud Bureau
- 12:30 p.m. **Medical Marijuana (Bill Draft #16)**
—Reena Szczepanski, Director, Drug Policy Alliance New Mexico
—Theshia Naidoo, Staff Attorney, Drug Policy Alliance, Office of Legal
Affairs
- 1:00 p.m. **Review of Proposed Legislation**
—Committee Members and Staff
- Public Comment**
- Adjourn**

Minutes

**MINUTES
of the
FIRST MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**June 7, 2006
Room 307, State Capitol
Santa Fe**

The first meeting of the Courts, Corrections and Justice Committee for the 2006 interim was called to order on Wednesday, June 7, 2006, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Joseph Cervantes, Co-Chair
Sen. Cisco McSorley, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Gail Chasey
Sen. Carroll H. Leavell
Sen. Richard C. Martinez
Rep. Al Park
Sen. Lidio G. Rainaldi
Sen. H. Diane Snyder
Rep. Peter Wirth

Advisory Members

Rep. Hector H. Balderas
Sen. Mary Jane M. Garcia
Rep. Jane E. Powdrell-Culbert
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart

Absent

Sen. Leonard Tsosie
Rep. Eric A. Youngberg

Sen. Ben D. Altamirano
Sen. Kent L. Cravens
Sen. John T.L. Grubestic
Sen. Clinton D. Harden, Jr.
Sen. Gay G. Kernan
Sen. Linda M. Lopez
Rep. W. Ken Martinez
Sen. Gerald Ortiz y Pino
Sen. William H. Payne
Rep. Bill Rehm
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Thomas E. Swisstack
Sen. James G. Taylor

Staff

Maha Khoury
Evan Blackstone
Sarah Salazar

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Call to Order

Senator McSorley, co-chair, welcomed committee members and guests and called the meeting to order at 10:20 a.m.

Overcrowding at the Women's Correctional Facility

Maureen A. Sanders, attorney for the American Civil Liberties Union (ACLU) and the New Mexico Women's Justice Project (WJP), discussed the overcrowding at the women's correctional facility in Grants and the transfer of women inmates from Grants to the Cornell facility in Albuquerque. The New Mexico Corrections Department (NMCD) transferred the inmates in response to a lawsuit filed by the ACLU and the WJP. The lawsuit claims the department has violated the Corrections Population Control Act by not convening the Corrections Population Control Commission to address the overcrowding that, it is claimed, has existed for approximately one year. Ms. Sanders updated the committee on the lawsuit; the actions taken by the department; the status of opening the new Camino Nuevo facility for women; the manner in which the women inmates were moved; the conditions of confinement; issues of good time; academic credits; visitation, exercise; and lack of programs. Ms. Sanders discussed the requirements of the Corrections Population Control Act, claiming that the department has failed to comply with the mandates of that law. Ms. Sanders further stated that the department has failed to participate in or provide gender-specific programming for women.

Jolene Gonzales, acting secretary, NMCD, responded to the comments made by Ms. Sanders and explained the actions taken by the department to respond to the overcrowding. James Brewster, chief deputy general counsel for the department, affirmed that the Corrections Population Control Commission has not met to address the overcrowding issue and confirmed that the commission has met only once since its creation in 2002. Erma Sedillo, deputy secretary of operations, NMCD, talked about the programs that are being offered at the women's facilities. She described the programs that are being planned for Camino Nuevo and NMCD's efforts to make the facility and programming more gender-specific. Elmer Bustos, director of adult prisons, NMCD, described moving the women inmates from the Grants facility to Cornell. He defended the department's actions and said the move to Camino Nuevo will probably be handled in a similar manner.

Committee members sought clarification on many issues, including the number of inmates, capacities of different facilities, population growth, NMCD staff, parole plans, programming for women and the legal duties created in the Corrections Population Control Act that have been ignored by the department.

2006 Interim Work Plan and Meeting Schedule

Committee members and staff discussed the interim work plan. Members requested that certain issues be addressed this coming interim. They also discussed meeting dates and

locations. Staff will present the committee's proposed work plan to the Legislative Council on June 28 for its approval.

Adjournment

The committee adjourned at 1:00 p.m.

**MINUTES
of the
SECOND MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**July 17, 2006
San Juan College
Farmington**

**July 18, 2006
San Juan County DWI Facility
Farmington**

The second meeting of the Courts, Corrections and Justice Committee for the 2006 interim was called to order by Senator Cisco McSorley, co-chair, on Monday, July 17, 2006, at 10:15 a.m. in the Henderson Fine Arts Center of San Juan College in Farmington.

Present

Sen. Cisco McSorley, Co-Chair
Sen. Rod Adair (July 18)
Rep. Thomas A. Anderson
Rep. Gail Chasey (July 17)
Sen. Richard C. Martinez
Rep. Al Park (July 17)
Sen. Lidio G. Rainaldi
Sen. H. Diane Snyder
Sen. Leonard Tsosie

Advisory Members

Rep. Hector H. Balderas
Rep. Jane E. Powdrell-Culbert
Sen. John C. Ryan (July 17)
Sen. James G. Taylor

Absent

Rep. Joseph Cervantes, Co-Chair
Sen. Carroll H. Leavell
Rep. Peter Wirth
Rep. Eric A. Youngberg

Sen. Ben D. Altamirano
Sen. Kent L. Cravens
Sen. Mary Jane M. Garcia
Sen. John T.L. Grubescic
Sen. Clinton D. Harden, Jr.
Sen. Gay G. Kernan
Sen. Linda M. Lopez
Rep. W. Ken Martinez
Sen. Gerald Ortiz y Pino
Sen. William H. Payne
Rep. Bill Rehm
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart
Rep. Thomas E. Swisstack

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury
Evan Blackstone
Lindsey Bilovesky

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Monday, July 17**Call to Order**

Senator McSorley, co-chair, welcomed committee members and guests. Welcoming remarks were made by Dr. Carol Spencer, president of San Juan College, and a discussion ensued about Farmington with Mayor William Standley.

Overview of Identity Theft Laws, Identity Theft Passport and Security Freeze Legislation

Heather Morton, senior policy specialist for the National Conference of State Legislatures, described the definition of identity theft and current laws in place at the state and federal level and offered several policy options that could be implemented, including identity theft passport, security breach legislation and the security freeze.

Michelle Jun, staff attorney for Consumer's Union, explored one policy option mentioned by Ms. Morton, the security freeze. Ms. Jun described the security freeze and its purpose and uses, which are to protect consumers from identity theft. Ms. Jun discussed different security freeze laws in various states and the model security freeze law for the Consumer's Union. She also commented on whether a fee should be associated with the placement or removal of security freezes.

Eric Rosenberg, director of state government relations for TransUnion, a consumer reporting agency, explained that identity theft legislation is new and untested and that legislators should be wary when implementing such a new law. He also mentioned that identity theft legislation may not stop the crime from happening, that it may help criminals and that it poses an inconvenience to the consumer.

Senator McSorley invited public comment, and several audience members offered suggestions, stated their concerns and asked questions. Committee members discussed possible solutions and asked questions of the panel.

The committee recessed for lunch at 12:53 p.m. and reconvened at 1:55 p.m.

Methamphetamine Use and Identity Theft

Mark Drebing, deputy district attorney for the Second Judicial District, discussed how many identity theft cases are linked to methamphetamine use. He profiled one criminal as an example. Mr. Drebing also explained each part of the methamphetamine ring of people that steal identities and commit crimes related to identity theft.

Brian McGuire, detective for the White Collar Crime Unit of the Albuquerque Police Department, focused on how these types of crimes affect victims.

Sylvia M. Martinez, deputy district attorney for the Second Judicial District, described statistics regarding the link between methamphetamine use and white collar crimes. She explained that drug charges are always listed first, so many more cases involve identity theft than it at first appears.

Committee members discussed policy options and asked questions of the panel.

Committee Business

A motion was made and seconded to approve the minutes of the June meeting. The minutes were approved without objection.

Funding for Civil Legal Services

Justice Edward L. Chavez, New Mexico Supreme Court, explained that there is a great need for legal aid to New Mexicans. He added that only 20 percent of New Mexico's legal aid needs are met. He explained what legal aid programs are needed to be successful.

Sarah M. Singleton, chair for the Civil Legal Services Commission, emphasized that legal aid organizations must turn away two residents for every one that they can help. She asked for an appropriation of \$4 million from the committee.

Terence Gurley, managing attorney for DNA's People's Legal Services, Inc., profiled the types of people that use civil legal services. He said his organization usually handles cases involving family, employment, health and landlord/tenant issues.

Kathleen Brockel, executive director for Law Access New Mexico, explained what her organization does. She emphasized that the biggest problem the organization faces is a lack of full-time attorneys.

Fernando Macias, executive director for New Mexico Legal Aid, added that he only has 25 full-time attorneys and three part-time attorneys to help the entire state. He said one of the most important tasks that his staff performs is to actually go to court with clients.

Senator McSorley asked if any members of the audience had questions or comments on the topics presented. There were comments and questions by the audience. Also, many legislators asked questions of the panel and discussed their support of appropriating money for civil legal services. At the request of the panel, Senator McSorley made a motion to send letters to each congressional delegate for New Mexico as well as one to the Legislative Finance Committee and one to the governor asking for additional funding for the legal aid programs. The committee approved this motion unanimously.

San Juan Communities Initiative

James C. Henderson, Ph.D., chair of the Board of County Commissioners of San Juan County, welcomed everyone to San Juan County. He and Senator Steven P. Neville described some of what the communities initiative does. The initiative deals with gang violence,

methamphetamine addictions and other community problems. Senator Neville asked the committee for three pieces of legislation. First, he requested that there be a penalty for being under the influence of illegal substances. Currently, there is only a charge for possession and distribution. Second, he requested that mandated assessment/screening be required for felony and substance abuse suspects to help law enforcement gather information for substance abuse charges. Third, he requested that multiple misdemeanor charges for embezzlement be aggregated into one felony charge. Currently, criminals are encouraged to embezzle small amounts because there is little punishment.

Lindy Bennett, district attorney for the Eleventh Judicial District, further described the problems with the current embezzlement laws.

Legislators clarified several issues and discussed policy options.

Recess

The committee recessed at 5:25 p.m.

Tuesday, July 18

Call to Order

Senator McSorley, co-chair, reconvened the committee at 9:21 a.m. at the San Juan County DWI Facility and welcomed members and guests. Welcoming remarks were made by Dr. James C. Henderson.

DWI Update: Statistical Trends, New Programs, Persistent Problems and Proposed Solutions

Rachel O'Connor, the DWI czar for the Office of the Governor, described current DWI statistics for New Mexico. She also explained several projects that her office is undertaking, such as a public awareness campaign, the ignition interlock system, Drunkbusters and Liquor Control Act regulation changes. She mentioned New Mexico's national standing, brought up some ongoing problems and talked about possible legislation the governor may want introduced.

Michael Sandoval from the Traffic Safety Bureau of the Department of Transportation stood for questions with Ms. O'Connor.

Committee members asked questions and expressed their concern with many of Ms. O'Connor's initiatives. Members suggested that Ms. O'Connor, as the DWI coordinator for the governor, put an ignition interlock in her car so she knows what kind of problems interlocks can cause and so she can set an example for the policies she promotes. Members also discussed recommendations and policy issues.

DWI in San Juan County

Robert V. Mitchell, director for the San Juan County DWI Facility and administrator for the Alternative Sentencing Division, explained the three components of his facility: incarceration, treatment and aftercare. He emphasized how treatment is the key in helping people get their lives on track. He described the program's budget requirements and its better-than-average statistics for recidivism.

Keith McPheeters, sergeant with the Farmington Police Department, described the facility's public awareness campaign. He also explained how the campaign may have affected first-time offenders. He tied the campaign to positive statistics.

Judge William Liese of Farmington Municipal Court and Judge William A. Vincent of San Juan County Magistrate Court described their role in DWI cases and what they see in San Juan County. Two officers from the Farmington Police Department were present for questions.

A representative from the New Mexico Criminal Defense Lawyers Association, Barry Klopfer, stated that an intensive outpatient program, such as drug or DWI court, and other forms of pre-prosecution diversion would work better for many clients than a mandatory incarceration for 28 days, where clients may lose their children and jobs due to an inflexible systematic application of San Juan County's program.

Members asked questions and discussed policy issues, including the lack of data that would compare this program to the DWI court programs, ethnic issues and divisions in the county, and asked about data that would show convictions and the ethnicity of defendants.

A tour of the facility was given by Robert Mitchell to committee members and staff.

Adjournment

The committee adjourned at 1:50 p.m.

**MINUTES
of the
THIRD MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**August 10, 2006
Destiny Center
Rio Rancho**

**August 11, 2006
Student Union Building, Ballroom C
University of New Mexico
Albuquerque**

The third meeting of the Courts, Corrections and Justice Committee for the 2006 interim was called to order by Senator Cisco McSorley, co-chair, and Representative Joseph Cervantes, co-chair, on Thursday, August 10, 2006, at 10:40 a.m. at the Destiny Center in Rio Rancho.

Present

Rep. Joseph Cervantes, Co-Chair
Sen. Cisco McSorley, Co-Chair
Rep. Gail Chasey
Sen. Carroll H. Leavell (August 11)
Sen. Richard C. Martinez
Rep. Al Park
Sen. Lidio G. Rainaldi
Sen. H. Diane Snyder
Sen. Leonard Tsosie (August 11)
Rep. Peter Wirth
Rep. Eric A. Youngberg (August 11)

Advisory Members

Rep. Hector H. Balderas (August 10)
Sen. Kent L. Cravens
Sen. Linda M. Lopez
Rep. W. Ken Martinez (August 11)
Sen. William H. Payne (August 11)
Rep. Jane E. Powdrell-Culbert
Rep. Bill Rehm
Sen. John C. Ryan
Rep. Sheryl Williams Stapleton
Rep. Thomas E. Swisstack (August 10)
Sen. James G. Taylor (August 10)

Absent

Sen. Rod Adair
Rep. Thomas A. Anderson

Sen. Ben D. Altamirano
Sen. Mary Jane M. Garcia
Sen. John T.L. Grubesic
Sen. Clinton D. Harden, Jr.
Sen. Gay G. Kernan
Sen. Gerald Ortiz y Pino
Sen. Michael S. Sanchez
Rep. Mimi Stewart

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury
Evan Blackstone
Lindsey Bilovesky

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Thursday, August 10**Call to Order**

Senator McSorley, co-chair, and Representative Cervantes, co-chair, welcomed committee members and guests. Representative Thomas E. Swisstack was appointed as temporary chair of the meeting and he welcomed the committee to his hometown.

Committee Business

A motion was made and seconded to approve the minutes of the July meeting. The minutes were approved without objection.

Juvenile Detention Alternatives Initiative

Douglas Mitchell, coordinator for the Juvenile Detention Alternative Initiative, described the initiative to the committee. He spoke about the logistics of the initiative, the benefits of the program, the progress made with youth and the challenges presented by youth committing crimes.

Dr. Nicole Morleand, researcher and statistician for Bernalillo County, presented positive statistics regarding youth involved in the Juvenile Detention Alternatives Initiative. She focused primarily on females, but recited statistics for all members involved.

Mr. Mitchell introduced three teens who are involved in the program, and they described their experiences. First, Nicole Montano, 15, explained that the program has provided her with better life opportunities that have stopped her from digging herself deeper into a life of crime. Next, Chris Pacheco, 19, described how the program is keeping him active and engaging his mind. Last, Richard Gamboa, 17, commented that the program keeps him working and out of trouble. Committee members asked questions and made comments to the youths.

Van Rocko, program coordinator for the Community Custody Program, and Yolanda Hall, also with the Community Custody Program, further described the program. They said that the supervision in the program is aggressive and that they try to adapt to the needs of families. They also described a G.P.S. bracelet that is used to monitor some of the youth in the program.

Senator McSorley and Representative Cervantes invited public comment. Committee members discussed possible solutions, made comments and asked questions of the panel.

The committee recessed for lunch at 1:00 p.m. and reconvened at 1:55 p.m.

Juvenile Justice Continuum Alliance

Representative Jeannette O. Wallace introduced the Juvenile Justice Continuum Alliance and asked committee members for their support.

Judge Barbara J. Vigil, First Judicial District Court, emphasized the collaboration between many communities on the Juvenile Justice Continuum Alliance. Judge Vigil highlighted many different programs in counties and cities across New Mexico. She concluded by explaining the lack of funding for the program and requested funds from the legislature for the program.

Representative Jim R. Trujillo praised the program and asked the committee for a bill to increase funding for the initiative.

Jack Ortega, coordinator for the Juvenile Justice Continuum Alliance, further described the financial position of the program. He emphasized that money is not wasted but combined to address juvenile issues.

Committee members sought public comment. Dave Schmidt, chair of the Juvenile Justice Advisory Committee, added that federal funds for the program only last for three years and that funding from the legislature is needed to continue the program. Committee members discussed policy options and asked questions of the panel.

Upon motion made, seconded and unanimously approved, the committee directed staff to prepare and send letters to the governor and the Legislative Finance Committee in support of funding for the Juvenile Justice Continuum Alliance in the Regional Juvenile Services Act.

Restorative Justice Programs

Thom Alena, managing partner, Innovations in Justice in Taos, and Bernadette Lauritzen, coordinator, Los Alamos County Restorative Justice Project, began by describing the concept of restorative justice. Mr. Alena explained that the process of restorative justice works to find common ground among the offender's interests, the victim's interests and the community's interests. He also highlighted the outcomes of restorative justice, which repair harm to victims, restore communities and assist youth in making better future choices. He described that current restorative justice juvenile diversion initiatives are being funded in Taos, Lincoln, Los Alamos, Chaves, Grant and Bernalillo counties. Mr. Alena stated that restorative justice programs address certain offenses, including property offenses, fighting and substance abuse offenses.

Mr. Alena explained that the Children, Youth and Families Department (CYFD) is looking at restorative justice as a potential program for kids who are released from the juvenile justice system. He pointed out that through restorative justice, communities can help with reintegration needs. He also stated that a legislative component will be needed for implementation of the program. The presenters showed the committee a video that focused on the benefits of a restorative justice program in Longmont, Colorado.

Senator McSorley asked for public comment. Committee members asked questions of the panel and discussed their support for including restorative justice into the juvenile justice system. At the request of the panel, Senator McSorley made a motion to send a letter to the CYFD and the Corrections Department supporting the integration of restorative justice with the juvenile and adult systems. The committee directed staff to include language in the letter that holds parents accountable and includes them in the restorative justice process. The committee approved this motion, with opposition from Senator H. Diane Snyder.

Update on Juvenile Justice and the New Mexico Boys' School

Roger Gillespie, director, Juvenile Justice Services, CYFD, updated the committee on the facilities used in the state by juvenile justice programs, including Springer, Eagle Nest, Camp Sierra Blanca, La Placita, the J. Paul Taylor Center, the Youth Diagnostic and Developmental Center and contract facilities in Santa Fe and Farmington. He also went over several of the programs that are available for juveniles in New Mexico.

Ted Lovato, deputy director for Field Services, Juvenile Justice Services, CYFD, stood for questions with Mr. Gillespie.

Legislators clarified several issues and discussed policy options. Members questioned Mr. Gillespie and Mr. Lovato regarding CYFD's response to complaints about the J. Paul Taylor Detention Center in Las Cruces.

Recess

The committee recessed at 5:20 p.m.

Friday, August 11

Call to Order

Senator McSorley and Representative Cervantes reconvened the committee at 9:16 a.m. in Ballroom C of the Student Union Building at the University of New Mexico and welcomed members and guests. Representative Gail Chasey was appointed as the temporary chair for the first presentation.

Election Day Registration

Matt Brix, executive director for Common Cause New Mexico, briefly explained the concept of election day registration (EDR) to the committee. He highlighted that six states already have EDR.

Larry Ghan, county commissioner for Bannock County, Idaho, described EDR and his participation in Idaho's transition to EDR. He described that Idaho is a mostly rural state with a population of 1.3 million. He explained that Idaho's voting registration requirements include that a person must have been a resident in Idaho for at least 30 days prior to election day and that a photo identification is required for EDR. Mr. Ghan went on to address many of the questions and concerns about EDR and how the process has worked in Idaho. He explained that he knows

of no case where voter fraud is a problem, that EDR has worked to make voter registration more accurate and timely and that EDR encourages voter participation.

Committee members asked questions and expressed their concern with the logistics of an EDR program. Members also discussed recommendations and policy issues after hearing a response from state officials, including Ernie Marquez, director of the Bureau of Elections in the Secretary of State's Office; Mary Herrera, the Bernalillo County clerk; and Mark Montoya, election coordinator for Bernalillo County. Mr. Marquez commented that the Secretary of State's Office believes that EDR is necessary, but that other priorities currently need to be addressed within the election system.

Liquor Control Act: Proposed Regulations and Framework for New Regulations Announced by Governor Richardson the Previous Day

Arturo L. Jaramillo, secretary of general services, and chair, Liquor Control Task Force, presented the final report of the Liquor Control Task Force created by Governor Richardson. He discussed the composition of the task force, the issues addressed, the meetings held and the final votes on recommendations. Recommendations of the task force included a reduction in the number of violations by a licensee before the license is revoked; that an intergovernmental conference be held on alcohol sales with the leadership of Indian nations, tribes and pueblos; that no change be made to the standard of "obvious intoxication" when citing licensees for serving to intoxicated patrons; and that legislation be proposed to allow local governing bodies to limit hours of operation by licensees within their jurisdiction. The announcement by the governor of the final rules adopted only one of the recommendations made by the task force, namely, that no change be made to the standard of evidence for intoxication.

Ray Sisneros, director of the Special Investigations Division of the Department of Public Safety, explained how his agency enforces the Liquor Control Act and the Tobacco Compliance Act. Mr. Sisneros presented statistics relating to alcohol and tobacco in New Mexico.

Joe Nestor Chavez from the American Beverage Institute and the New Mexico Grocers Association presented alternative solutions to help curb DWI. He suggested that consumer responsibility is most important. He proposed that server alcohol training courses should be more rigorous, that bars should be able to confiscate fake identifications and that mandated high school classroom instruction could help when consumer responsibility fails.

Carol Wight from the New Mexico Restaurant Association emphasized that the recommendations given by Mr. Jaramillo are not reflective of the entire Liquor Control Task Force. She pointed out that it is not illegal to be drunk, but it is a misdemeanor to serve an intoxicated person. She added that it is a petty misdemeanor for a minor to buy alcohol, but it is a fourth degree felony for businesses to serve minors. She stated that employees should not be working in a state of fear.

Senator McSorley and Representative Cervantes invited public comment. Many members of the public spoke. Committee members discussed possible solutions, made comments and asked questions of the panel.

Adjournment

The committee adjourned at 2:24 p.m.

**MINUTES
of the
FOURTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**September 14-15, 2006
New Mexico State University Golf Course Club House
Las Cruces**

The fourth meeting of the Courts, Corrections and Justice Committee for the 2006 interim was called to order by Representative Joseph Cervantes, co-chair, and Senator Cisco McSorley, co-chair, on Thursday, September 14, 2006, at 10:34 a.m. at the University Golf Course Club House in Las Cruces.

Present

Rep. Joseph Cervantes, Co-Chair
Sen. Cisco McSorley, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Sen. Carroll H. Leavell
Sen. Richard C. Martinez
Rep. Al Park
Rep. Peter Wirth

Advisory Members

Sen. Mary Jane M. Garcia (September 15)
Rep. W. Ken Martinez
Rep. Jane E. Powdrell-Culbert
Rep. Bill Rehm

Absent

Rep. Gail Chasey
Sen. Lidio G. Rainaldi
Sen. H. Diane Snyder
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

Sen. Ben D. Altamirano
Rep. Hector H. Balderas
Sen. Kent L. Cravens
Sen. John T.L. Grubescic
Sen. Clinton D. Harden, Jr.
Sen. Gay G. Kernan
Sen. Linda M. Lopez
Sen. Gerald Ortiz y Pino
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart
Rep. Thomas E. Swisstack
Sen. James G. Taylor

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury
Evan Blackstone
Lindsey Bilovesky

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Thursday, September 14**Call to Order**

Senator McSorley and Representative Cervantes welcomed committee members and guests.

Welcoming Remarks

Dr. Michael V. Martin, president of New Mexico State University (NMSU), welcomed the committee to NMSU. He emphasized how proud he is of his students. He explained that NMSU has increased enrollment, completed a five-year capital plan in only two years and has been working diligently with the legislature.

Surface Owner Protection Act

Representative Andy Nunez introduced his version of the Surface Owner Protection Act. He wants tighter restrictions than the substitute bill of last session.

Alisa Ogden, president-elect of the New Mexico Cattle Growers Association (NMCGA), supports the bill as well. She described the new attitude that has been adopted by the NMCGA. This bill would require compensation for damages and for use of the land. It also extends the period of time that a surface owner and operator have to reach an agreement.

Bruce Baizel, staff attorney for the Oil and Gas Accountability Project, explained that this bill does not change the dominance of the mineral estate. He stated that access to minerals is an important part of the bill, but requiring notice and discussion prior to accessing minerals is necessary. Mr. Baizel would like to see a compromise between surface owners and operators.

Bob Gallagher, president of the New Mexico Oil and Gas Association (NMOGA), introduced his version of the Surface Owner Protection Act. Mr. Gallagher made it clear that this is the same bill that passed the house last session. He said that the NMOGA is the only agency of its kind to support a surface owner protection bill.

Raye Miller, Executive Committee member for NMOGA, said he thinks the bill is a compromise. It allows sufficient notice prior to a surface disturbance. It provides for cooperation with the land owner and compensation for damages. The operators also must post a bond if they cannot reach an agreement with the surface owner. However, the NMOGA will not pay for loss of use of the land, just the damages.

Senator McSorley and Representative Cervantes invited public comment. Committee members discussed possible solutions and asked questions of the panel.

New Mexico Women's Justice Project: Incarceration vs. Treatment and Other Issues

Maureen A. Sanders, president of the New Mexico Women's Justice Project (WJP), explained that she is frustrated with the New Mexico Corrections Department's (NMCD) and the Corrections Corporation of America's handling of services and programs for women at the newly opened Camino Nuevo facility in Albuquerque. She emphasized the lack of proper gender-specific programming at the facility, including the lack of education, parenting and substance abuse treatment programs. She also informed the committee of deficiencies in the facility's work release program. She emphasized that WJP's goal is to lower recidivism of women in the state and that correctional facilities in the state should implement gender-responsive training and programming. This includes training for all adult and juvenile correctional, probation and parole officials, private providers of service and drug court providers. Also, women need programming that fits their psychological, social and cultural needs.

Diane Wood, spokesperson for the WJP, explained the project's legislative funding and policy recommendations. Its recommendations include a full investigation of mental health and health services in correctional facilities, oversight of NMCD, contract management of privately run prisons and Population Control Commission sunrise legislation. The WJP also wants funding for halfway houses, substance abuse treatment and gender-responsive training. WJP also requested creating an Employment Barriers Task Force that would review employment opportunities with statutory and regulatory barriers for former felons and make recommendations.

Angie Vachio, vice president of the WJP, emphasized the extreme need for housing. Halfway houses and specialty complexes are needed because felons are restricted from living in public housing. This also negatively affects the children of such felons. Ms. Vachio said that children are eight times as likely to end up incarcerated if a parent is or was incarcerated and that WJP is trying to break this cycle.

Senator McSorley and Representative Cervantes invited public comment. Erma Sedillo, deputy secretary for operations for the NMCD, responded to Ms. Sanders' comments regarding the Camino Nuevo facility. She stated that the NMCD does have substance abuse programs in its facilities and that although there is not a substance abuse program in Camino Nuevo, the department is working on it. She also pointed out that there is a mental health treatment program in the Grants facility and that NMCD is working to improve the work release program at Camino Nuevo. Committee members discussed possible solutions and asked questions of the panel. Representative Cervantes asked for a letter from Irma Sedillo, the deputy secretary of NMCD, that states that any committee member could drop by for a tour of the facility and inspect records.

Senator Leavell made a motion to invite the Administrative Office of the Courts and the Department of Finance and Administration to the next meeting to explain how the SHARE System is being corrected. Senator Martinez seconded the motion and it was passed without opposition.

The committee recessed for lunch at 1:12 p.m. and reconvened at 2:00 p.m.

Judicial Standards Commission: Enforcing the Code of Judicial Conduct and Practicing Before the Commission

Chief Justice Richard C. Bosson, New Mexico Supreme Court, stated how important the Judicial Standards Commission's (JSC) work is in ensuring an independent and honorable judiciary in the state. James Noel, executive director for the JSC, described the inner workings of the JSC. Mr. Noel explained that the commission has jurisdiction to hear complaints concerning all judges in New Mexico. The JSC has the authority to request that the New Mexico Supreme Court discipline or censure a judge. David Smoak, chair of the JSC, described his experience as a layperson on the commission. He also gave a breakdown of the process flow chart. Justice Dan Sosa, Jr., a member of the JSC, analyzed his experiences with the commission.

Joleen K. Youngers, attorney, Almanzar and Youngers, P.A., described ways to improve the commission. Ms. Youngers said that many common themes have occurred such as intrusion, undue interference with the court system, narrowing the focus of the courts, causing damage to judges' reputations and forcing vindicated judges to pay for attorney fees and costs. She proposed that a voluntary peer council could screen which cases should be heard by the commission. Ms. Youngers stated her concern that the state is losing talented judges and that new, potentially talented judges are too fearful to run for office.

Lawrence R. White, attorney, Miller Stratvert, P.A., explained to the committee that he has serious doubts about the fairness of the JSC. The JSC interprets its own rules, does not get the benefit of minimal standards and it decides its own discovery issues as well. Mr. White's recommendation is to hire independent counsel for the commission that is completely separate from the staff that charges and investigates a judge.

Senator McSorley and Representative Cervantes invited public comment. Las Cruces Judge Locatelli described his experience with the JSC and expressed his concerns. Committee members discussed possible solutions and asked questions of the panel.

Border Security: Operation Safe Border

Tim Manning, homeland security advisor and the Office of Emergency Management director for the Department of Public Safety, explained the governor's declaration of emergency that was officially announced last year concerning New Mexico's border with Mexico. He also described Operation Jumpstart, which moved additional National Guard troops to the border area. Colonel James Morgan, New Mexico National Guard, further explained Operation Jumpstart. Taskforce Zia is made up of an additional 900 soldiers that provide direct support to border patrol agents.

Lieutenant Roman Jimenez, New Mexico State Police, stated that his department provides law enforcement services around the clock. Sheriff Todd Garrison, Dona Ana County Sheriff's Office, explained that his department uses Highway 9 and Highway 26 to look for illegal aliens and drug traffickers. Raymond Cobos, undersheriff for Luna County, said the money funded by the declaration of emergency was needed desperately. He said bodies were found in the desert and illegal immigrants were stealing from farmers and residents of the state. The money has helped to combat this.

Experience of Border Communities

Kathleen Erickson, Sisters of Mercy, and spokesperson for Desert Humanitarians, spoke about humane immigration reform. Ms. Erickson stated that border issues have their roots in

poverty issues. She stated that the United States is at least partially responsible for the poverty in Latin America. She stands against militarizing the border, and instead would like to change the typical conversation on border security. Elizabeth Camargo, program coordinator for the Border Network on Human Rights, spoke about the militarization of the border and how it has adversely affected border communities, increased crime and discouraged people from cooperating with law enforcement. She told stories of mistreatment of people by law enforcement simply because they were of Latin American descent.

Marcela Diaz, executive director of Somos Un Pueblo Unido, stated that people deserve civil rights and human rights regardless of their immigration status. She described how local law enforcement is illegally detaining people on a federal immigration and customs enforcement (ICE) hold by not following procedures and by holding people beyond their release date. Ms. Diaz stated that the federal government is not paying for the alleged ICE holds, either.

Senator McSorley and Representative Cervantes invited public comment. Committee members discussed possible solutions and asked questions of both the border security panel members and the human rights advocates.

Committee Business

A motion was made and seconded to approve the minutes of the August meeting. The minutes were approved without objection.

Recess

The committee recessed at 6:35 p.m.

Friday, September 15

Call to Order

Senator McSorley and Representative Cervantes reconvened the committee at 9:35 a.m. and welcomed members and guests.

Problems with Eyewitness Identification Testimony

Michael Stout, New Mexico Criminal Defense Lawyers Association, emphasized that mistaken identification by eyewitnesses is the leading cause of wrongful convictions in New Mexico. He introduced draft legislation to the committee that he thinks will reduce this problem. Mr. Stout explained that memory is afflicted before and after the identification, causing false certainty in some situations. The act would include provisions for: written description prior to a lineup, informing the eyewitness that the suspect may not be in the lineup, making the lineup a double-blind procedure and showing suspects sequentially, not simultaneously. Also, showups would be discouraged and the procedure must be recorded. First Judicial District Attorney Henry Valdez stated that many of the studies relied upon by the defense lawyers are not sound science. Senator McSorley directed staff from the New Mexico Sentencing Commission to study the science issue.

The co-chairs invited public comment. Committee members discussed possible solutions and asked questions.

The REAL ID Act of 2005: Requirements, Implementation and Options Available to States

Matt Sundeen, Transportation Program principal, National Conference of State Legislatures (NCSL), discussed implications and options for states regarding the REAL ID Act of 2005. The act, passed by the Congress in 2005 and signed by the president, imposes minimum standards for federal use of a driver's license or identification card. Pursuant to the act, after May 11, 2008, a federal agency may not accept a driver's license or identification card for "official purposes" unless the issuing state meets the requirements of the REAL ID Act. "Official purposes" may include boarding commercial aircraft and accessing federal courts and facilities. Congress charged the federal Department of Homeland Security (DHS) with promulgating standards and certifying states' compliance with the act.

Mr. Sundeen summarized the various requirements imposed by the REAL ID Act. The act requires states to implement minimum driver's license and identification card design requirements. A license or card must include, among other requirements, a person's full legal name, a digital photograph, address of principal residence and physical security features designed to prevent tampering, counterfeiting, duplication and fraud. The act also mandates that states verify a person's lawful status before issuing a license or identification card. In order to receive a license or card, a person must be a citizen or national of the United States or meet one of the eight categories of lawful immigrant status. Additionally, states must verify the validity and completeness of all documents presented by a person when applying for a license or card. This includes birth certificates, social security numbers and immigration documents. For purposes of a REAL ID-compliant license or card, the act prohibits states from accepting any foreign document other than an official passport. Mr. Sundeen also informed the committee about the REAL ID Act's data storage, retention and security requirements. For example, states must employ technology to capture digital images of identity source documents, subject all persons involved in issuing or producing licenses or cards to security clearance requirements and establish fraudulent document recognition training.

Mr. Sundeen went on to review some of the concerns and costs associated with the REAL ID Act's implementation. He stated that the verification of all documents presented by a person may be difficult and costly, that 11 states do not have lawful presence requirements for a license or card and that there are significant costs for new security requirements and training of motor vehicle agency employees. He also pointed out that there is a lack of federal funding to help states with implementation. Although the REAL ID Act authorizes DHS to make grants to assist states with implementation, there is no money in the current appropriations bill for that purpose. Mr. Sundeen told the committee of NCSL's resolution, recently adopted, that urges the federal government to fund the act or repeal it.

Finally, Mr. Sundeen discussed options for state legislatures. He said states could choose to comply or not comply with the act, make a symbolic gesture such as a resolution or memorial, create a task force, work on the act's known requirements or lobby Congress.

Kenneth Ortiz, director of the Motor Vehicle Division (MVD), Taxation and Revenue Department, reviewed for the committee the impact, cost and challenges for New Mexico presented by the REAL ID Act. According to MVD's estimates, compliance with the REAL ID Act will cost New Mexico \$13,053,000 in fiscal year 2008 and \$6,044,000 each year thereafter.

He clarified for the committee that the cost estimates may change when DHS promulgates regulations for the act in early 2007.

Mr. Ortiz explained that the act's minimum document requirements, particularly requiring a person's address of principal residence on the card or license, would severely impact MVD's ability to mask or create false addresses for undercover agents or persons in witness protection programs. The act's document verification requirements also present significant issues. Although MVD currently verifies a person's name, date of birth and social security number with the Social Security Administration, Mr. Ortiz stated that it is difficult to verify birth records. Currently, only about 40 percent of New Mexico's birth records are available for electronic verification. To comply with the REAL ID Act, the MVD also needs to build an all-driver database capable of exchanging driver's license information between states, including histories, citations and revocation history information. He also pointed out that MVD's system is one of the oldest in the nation and that the division will need to purchase the hardware, software and record retention capacity needed to store images of identity source documents.

Mr. Ortiz went on to discuss the estimated costs and various concerns with the REAL ID Act's security clearance requirements and legal presence requirements. MVD currently has a fraudulent document recognition training program for its employees engaged in the handling and issuance of licenses and cards, but additional employees and funding would be required to provide training to all state, municipal and private agent employees. Additionally, Mr. Ortiz highlighted, under New Mexico law, MVD currently issues licenses and cards regardless of a person's immigration status. Mr. Ortiz proposed creating a separate document such as a "driving permit" that would allow a foreign national to drive on New Mexico's roads but would not be recognized for purposes of the REAL ID Act.

Jim Harper, director of information policy studies for the Cato Institute, explained to the committee that the REAL ID Act calls on states to implement a national ID. He urged the committee not to comply with the REAL ID Act, regardless of whether the federal government provides funding to states for implementation. Mr. Harper stated that the uniform identification system imposed by the federal government has three major privacy consequences. First, the system helps to move forward surveillance of the public by making it easier to obtain and access identification data. Second, the system represents a major transfer of power from individuals to institutions of government. Lastly, it increases the risk of persons becoming victims of identity fraud because of the centralization of identification information.

Mr. Harper asked the committee to question what benefit the REAL ID Act has as a preventative measure against terrorism. He emphasized that the act misses the mark on this issue and fails to address the terrorist element of surprise. The REAL ID Act, Mr. Harper said, would raise the cost of getting false documents and increase the cost to a level where it becomes prohibitive for illegal immigrants to pay the price. He also pointed out that identification is not required to board a plane and a person can get secondary screening in lieu of showing identification.

Christopher Calabrese, counsel for the American Civil Liberties Union's (ACLU) Technology and Liberty Project, expressed the ACLU's opposition to the REAL ID Act. Mr. Calabrese explained that there will be dramatic costs to citizens if the act is implemented. He went on to discuss Alabama's experience with attempting to comply with the REAL ID Act's

requirement that names exactly match individuals' names as held by the Social Security Administration. In that case, Mr. Calabrese said, many citizens became panicked, worried they would lose their right to drive, waited in line for days and were angered by delays and fees they experienced. He emphasized that New Mexicans would experience the same nightmares, including higher fees, worse service at the MVD and bureaucratic hassles. Citizens will not call Congress in these situations, he stated, they will call and complain to state legislators.

Mr. Calabrese went on to summarize the ACLU's points of opposition to the REAL ID Act. The act's principal residential address requirement exposes victims of domestic violence. It also hits elderly New Mexicans the hardest, threatens privacy and freedom of movement, creates a "one-stop shop" for identity thieves and usurps states' rights. He urged the committee to reject compliance with the REAL ID Act and, that if enough states refuse to comply, it will create sufficient momentum for Congress to respond.

Tyler Moran, policy analyst for the National Immigration Law Center, discussed the problems presented by the REAL ID Act for immigrants. She pointed out that in 2003, New Mexico made a decision to issue driver's licenses to residents regardless of immigration status and that the REAL ID Act requirements exclude not only undocumented immigrants but also lawful immigrants. Ms. Moran informed the committee that it is hard for immigrants to prove their full legal name, and verification through a national database can take up to two weeks. She explained the different complexities of immigration status classifications and that the training for MVD employees will be complicated and ongoing.

Ms. Moran also highlighted for the committee some options the legislature may pursue in responding to the REAL ID Act. She stated the best option is not to implement the act since New Mexico has a progressive driver's license policy and it will become easier to get a passport than a license. Secondly, New Mexico may implement the act through a state identification card and not a license. However, that option would present significant costs because the state would have to maintain two database systems.

Committee members expressed their concern and discussed options. Some members urged that New Mexico not comply with the act.

Adjournment

The committee adjourned at 1:00 p.m.

**MINUTES
of the
FIFTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**October 19-20, 2006
Bob Moran Multi-Purpose Room
New Mexico Junior College
Hobbs**

The fifth meeting of the Courts, Corrections and Justice Committee for the 2006 interim was called to order by Representative Joseph Cervantes, co-chair, and Senator Cisco McSorley, co-chair, on Thursday, October 19, 2006, at 10:25 a.m. at the New Mexico Junior College in Hobbs.

Present

Rep. Joseph Cervantes, Co-Chair
Sen. Cisco McSorley, Co-Chair
Sen. Carroll H. Leavell
Sen. Richard C. Martinez
Rep. Al Park
Rep. Peter Wirth

Advisory Members

Sen. Gay G. Kernan
Rep. Jane E. Powdrell-Culbert

Absent

Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Gail Chasey
Sen. Lidio G. Rainaldi
Sen. H. Diane Snyder
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

Sen. Ben D. Altamirano
Rep. Hector H. Balderas
Sen. Kent L. Cravens
Sen. Mary Jane M. Garcia
Sen. John T.L. Grubescic
Sen. Clinton D. Harden, Jr.
Sen. Linda M. Lopez
Rep. W. Ken Martinez
Sen. Gerald Ortiz y Pino
Sen. William H. Payne
Rep. Bill Rehm
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart
Rep. Thomas E. Swisstack
Sen. James G. Taylor

Staff

Maha Khoury
Evan Blackstone
Lindsey Bilovesky

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Thursday, October 19**Call to Order**

Senator McSorley and Representative Cervantes called the meeting to order. Senator Leavell welcomed the committee to his district. He recognized members of the public and introduced committee members and staff.

Welcoming Remarks

Harry Teague, Lea County Commission chair, welcomed the committee to Lea County. He emphasized that Lea County used to feel like "little Texas", but now truly feels like a county of New Mexico.

Dr. Steve McCleery, president of the New Mexico Junior College, thanked committee members for hosting their meeting at the college. He commented on services the college provides, such as housing the Law Enforcement Academy and training corrections officers.

Keith Rice, Lea County sheriff, welcomed the committee on behalf of all law enforcement officials. He offered to help committee members by answering any questions they had during their stay in Hobbs.

Committee Business

Attending members of the committee recommended approval of the minutes.

New Mexico Sentencing Commission Update

Michael Hall, executive director of the New Mexico Sentencing Commission (NMSC), described the commission's duties. Mr. Hall explained that the NMSC serves as a clearinghouse for New Mexico's justice system data, as well as housing the Sex Offender Management Board and the Justice Information Sharing Council (JISC). NMSC also doubles as an objective expert research group at the University of New Mexico. Mr. Hall described the JISC and its services to committee members. He highlighted new programs, such as the Consolidated Offender Query, that allow criminal justice personnel to gather detailed case information for DWI cases, protective orders, sex offender cases and warrant information.

Tony Ortiz, deputy director, NMSC, discussed the recent workload assessment study for judges, district attorneys and public defenders. Mr. Ortiz is collecting data from all entities in the judicial system. Over the last six months, he has met with each different judicial agency to decide how to most effectively collect the data. Following the data collection, an advisory group

will compare the statistics to national standards. This study will provide evidence-based information that may help support the departments' legislative requests.

Mr. Ortiz also explained draft legislation that would require bills that increase criminal penalties to reflect cost increases that may occur as a result of the penalty change. The cost increase would be indicated on the face of the bill. This proposed process would cost an additional \$70,000 per year for staff at NMSC to estimate the increase, but may ultimately help the justice system with underfunding. Lastly, Mr. Ortiz discussed draft legislation developed by NMSC that uses a formula to distribute money to counties to reimburse them for housing felony offenders in county detention facilities.

Randall Cherry, senior general counsel, NMSC, discussed the Sex Offender Management Board. Work groups include: the adult treatment work group, the adult supervision guidelines work group, the juvenile treatment work group and the juvenile supervision guidelines work group. He described risk assessment tools and emphasized that treatment impacts recidivism. He noted a request that a member of the Native American community be added to the board to help make educated, culturally sensitive decisions in Native American cases. Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of the panel.

Update on the Implementation of Katie's Law

John Krebsbach, chair of the DNA Oversight Committee, updated the committee on the implementation of Katie's Law that will go into effect on January 1, 2007. Improved DNA collection kits have been created instead of the large cotton swabs that could potentially be used as weapons. The new swab is smaller and does not have to be refrigerated. However, the new kit is slightly more expensive, costing \$4.30 per kit. Saving on storage expenses will make up for the difference in cost. Mr. Krebsbach and his staff have also: created a list of qualifying offenses that will simplify the process of charging a suspect; created an electronic method of verifying previously collected samples; rewritten the software program; gained new hardware and computer connections; and started on-site training. Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of the panel.

The committee recessed for lunch at 12:38 p.m. and reconvened at 1:42 p.m.

Fifth Judicial District Court: Welcome and Update

Gary Clingman, chief judge of the Fifth Judicial District, and Cynthia Ohrazda, Lea County chief juvenile probation officer, welcomed the committee to Lea County. Ms. Ohrazda explained that Lea County is using an array of graduated sanctions for juveniles and risk assessment tools. She stated that the Juvenile Detention Center in Lea County is a regional facility. Currently, 13 juveniles are being housed from Lea and Eddy counties. Ms. Ohrazda discussed statistics for adjudication and referrals. She also mentioned that meth use is a major problem for children in juvenile detention. The accessibility and affordability of meth contributes to the problem. A major problem in her department is staffing. Ms. Ohrazda said that she is having trouble keeping the juvenile probation officer positions filled. Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of the panel.

Report from the Judiciary: Unified Budget and Proposed Legislation

Edward L. Chavez, New Mexico Supreme Court justice, began by introducing the judges and other members of the judiciary present at the meeting. James J. Wechsler, Court of Appeals judge, presented the judiciary's unified budget and priorities such as adequate base budgets, staff salary increases, information technology initiatives, replacement of drug court funds, new staff, expanding and creating children's programs, expanding the drug court system, new judgeships, increasing salaries of court interpreters and other initiatives. Judge Wechsler also discussed performance measures and staffing details.

Arthur W. Pepin, director of the Administrative Office of the Courts, presented proposed legislation for fiscal year 2008, including new judgeships; drug court funding; court and district attorney facilities; increased jury pay; a Judicial Performance Evaluation Fund; the creation of a Court of Appeals Building Commission; an increase in the Bernalillo County Metropolitan Court judges' salaries; enhanced background checks in Bernalillo County Metropolitan Court; mental health court programs; restorative justice programs; pretrial services; the creation of a Municipal Court Support Division; and cleanup language for designated magistrate jurisdiction.

Michael Bustamante, Court of Appeals chief judge, and Gina Maestas, Court of Appeals chief clerk, discussed the status of the Court of Appeals Annex at the University of New Mexico School of Law to house judges and staff and include storage space. Judge Bustamante emphasized that a Court of Appeals Building Commission would ensure a transparent process.

Felix Briones, chair of the Judicial Performance Evaluation Commission (JPEC), described the work of the commission. The JPEC provides recommendations on judge retention based on merit since 1988. Mr. Briones spoke about proposed legislation for a nonreverting fund and compared New Mexico's budget and practices with that of surrounding states.

Judith Nakamura, Bernalillo County Metropolitan Court chief judge, described a pilot program in which \$400,000 would be used to hire personnel to perform more thorough background investigations of defendants posting bonds or responding to summonses. Judge Nakamura asked for an appropriation from the legislature for the program. She also requested an increase in metropolitan judges' salaries in hope of attracting quality judges. Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of the panel.

Tour

Committee members, staff and visitors toured the Lea County Correctional Facility.

Recess

The committee recessed at 6:45 p.m.

Friday, October 20

Call to Order

Senator McSorley and Representative Cervantes reconvened the committee at 9:20 a.m. at the New Mexico Junior College in Hobbs and welcomed members and guests. Senator Leavell asked for a short presentation from District Attorney Terry Hate about the difficulties in attracting prosecutors to Lea County.

Prosecuting in Lea County

Mr. Hate emphasized the importance of quality career prosecutors. The District Attorney's Office cannot attract quality prosecutors because it cannot pay them enough. He also described how difficult it is to move up in the business. Mr. Hate said most moves are lateral and staff turnover is a problem. Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of Mr. Hate.

New Mexico Corrections Department: Overcrowding, Springer, Clayton and Camino Nuevo

Joe Williams, New Mexico Corrections Department (NMCD) secretary, gave the committee in-house predictions of correctional facility projected capacity. He said the statistics have not been evaluated by the NMCD's consultant yet, but they are a good rough estimate. Women's correctional facilities are increasing such that all beds will be full in 2013. This includes beds that are part of planned expansions. Men's correctional facilities are currently at 97 to 110 percent of their rated capacity. With planned expansions and new facilities, statistics predict that the facilities will be at or over capacity once again in 2009. Secretary Williams spoke about the upcoming expansion of the Guadalupe County Correctional Facility and described the newly opened women's correctional facility, Camino Nuevo and the Springer Correctional Facility. Secretary Williams emphasized that all facilities in the state will soon be accredited by the American Correctional Association. New Mexico would be one of only five states that will have statewide accreditation. Secretary Williams gave an update on the Corrections Population Control Commission and discussed possible changes and improvements to the commission.

Erma Sedillo, NMCD deputy secretary of operations, and Jolene Gonzales, NMCD deputy secretary of administration, explained the progress and status of obtaining an overnight family visitation trailer.

Mike Running, Clayton city manager, and Robert Beck, Clayton city attorney, described the status of the upcoming Clayton Correctional Facility and some details of the contracts involved. Construction has just begun and Mr. Running emphasized that construction costs have risen over 150 percent, which have slowed the process. The Clayton Correctional Facility is predicted to open in June 2008. The management positions have already been filled.

Diane Wood, Women's Justice Project administrator, and George Bach, American Civil Liberties Union staff attorney, expressed concern that correctional facility overcrowding has violated human rights. Ms. Wood said that an excess of inmates presents a problem because there is not enough staff to adequately attend to them. Mr. Bach linked overcrowding to high recidivism. He stated that New Mexico has three statutory early release and community involvement programs that are not utilized. Both Ms. Wood and Mr. Bach feel that the NMCD is violating those statutes.

Committee members discussed possible solutions and asked questions of the panel.

Inmate Health Care and Oversight

Mr. Bach spoke on behalf of current Wexford Health Sources, Inc., employees who are upset with the company's unsatisfactory health care services and are afraid of retribution for speaking out. NMCD contracts with Wexford for the provision of health care services. Mr.

Bach said it is not providing adequate care. The company's usual excuse when a health care problem arises is that a filing mistake occurred in its administrative office. For example, if an inmate complained about not receiving medical care after attempting to obtain it, Wexford would state that there was never a written request on file. Mr. Bach said that the Lea County Correctional Facility is short-staffed and its routine medical supplies are depleted before a new shipment arrives.

Norbert Sanchez, former staff nurse with the Long-Term Care Unit at the Central New Mexico Correctional Facility, spoke about his experiences with Wexford and the lack of adequate care provided to inmates. He also spoke on behalf of a currently employed nurse at the Lea County Correctional Facility whose training level mandates that she work under the supervision of a registered nurse but who is left alone to lift patients onto the examining table and disseminate medications, both of which she cannot and should not be doing.

Luis Martinez, father of an incarcerated son, explained his son's delicate medical condition. Mr. Martinez said his son has not received adequate medication, doctor appointments have been delayed and he was not transported to the hospital until he was bleeding severely.

Devendra Singh, M.D., NMCD, explained that all the correctional facilities' medical practices abide by national standards. He described the process and explained that many inmates are diagnosed with a disease for the first time at a correctional facility. He stated that patients with chronic illnesses are seen once a month, and if someone feels they are not getting adequate care, they can file an emergency medical grievance with the warden. He conceded that it is very difficult to employ dentists at prisons and there is a backlog to see the dentist. Dr. Singh said they have always had exceptional audits, and they are beginning to do an audit twice a year to further monitor health care service.

Mark Hale, president, Wexford Health Sources, Inc., said he is proud of the physician-run model of health care, and stated that Wexford was audited 14 times in two years and all audits have been sound. He said Wexford is providing health care in Illinois, Mississippi, Maryland, Virginia and Ohio.

Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of the panel. The co-chairs requested that the Legislative Finance Committee be requested to conduct a special performance audit of health care in the prisons and that it be done by an independent third party. Committee members present were all in favor of the audit and requested that interviews of Wexford employees be conducted anonymously and without fear of retaliation. Both Mr. Williams and Mr. Hale stated they welcome such an audit.

Adjournment

The committee adjourned at 1:00 p.m.

(not approved)

MINUTES of the SIXTH MEETING

**of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**November 15-17, 2006
Room 311, State Capitol**

The sixth meeting of the Courts, Corrections and Justice Committee for the 2006 interim was called to order by Senator Cisco McSorley, co-chair, on Wednesday, November 15, 2006, at 10:10 a.m. in Room 311 at the State Capitol in Santa Fe.

Present

Rep. Joseph Cervantes, Co-Chair
Sen. Cisco McSorley, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Gail Chasey (November 17)
Sen. Carroll H. Leavell (November 15, 17)
Sen. Richard C. Martinez (November 16, 17)
Rep. Al Park (November 15, 16)
Sen. Lidio G. Rainaldi
Sen. H. Diane Snyder (November 16)
Rep. Peter Wirth
Rep. Eric A. Youngberg

Absent

Sen. Leonard Tsosie

Advisory Members

Rep. Hector H. Balderas (November 16)
Sen. Mary Jane M. Garcia (November 16, 17)
Sen. John T.L. Grubesic
Sen. Gay G. Kernan
Sen. Linda M. Lopez (November 16)
Rep. W. Ken Martinez (November 16)
Sen. John C. Ryan
Sen. Michael S. Sanchez (November 16)
Rep. Sheryl Williams Stapleton (November 16, 17)
Rep. Mimi Stewart

Sen. Ben D. Altamirano
Sen. Kent L. Cravens
Sen. Clinton D. Harden, Jr.
Sen. Gerald Ortiz y Pino
Sen. William H. Payne
Rep. Jane E. Powdrell-Culbert
Rep. Bill Rehm
Rep. Thomas E. Swisstack
Sen. James G. Taylor

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury
Evan Blackstone
Lindsey Bilovesky

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Wednesday, November 15

Call to Order

Senator McSorley, co-chair, welcomed committee members and guests. He announced that Representative Justine Fox-Young was invited to testify on voter fraud, but will not attend, and read excerpts of her testimony on voter fraud earlier this year. He invited public comment and several members of the public described personal experiences with voting and voiced opinions.

Elections: Deposits for Recounts

Ernie Marquez, Bureau of Elections director, explained that the state canvass will be completed on Friday. Mr. Marquez said there were no outstanding election problems with paper ballots and that recounts are becoming expensive. Monetary deposits are required by the official requesting the recount, but if the official still winds up losing, the fees are hardly ever recovered. Mr. Marquez suggested increasing the initial deposit for a recount and toughening the statute that requires officials to pay.

Senator McSorley invited public comment. Several members of the public made suggestions. Committee members asked questions and clarified issues.

Elections: Voting Machine Audit Procedures

Paul Stokes, United Voters of New Mexico coordinator, discussed draft legislation that would audit, at random, several voting machines by recounting the votes and comparing them against the original count. If the audit indicates that an error has occurred, further sampling would take place. Mr. Stokes said that the voting process needs this type of oversight because voting machines are susceptible to mechanical and programming errors as well as manipulation. He suggested how the hand count should be orchestrated, and gave examples of efficient processes in other states.

Representative Cervantes invited public comment and several members of the public responded. Committee members asked questions and clarified issues.

Elections: Election Day Registration

Steve Fetig, Verified Voting New Mexico spokesperson, discussed draft legislation concerning the implementation of election day registration with committee members. The proposed bill would allow citizens in their proper precinct to both register and vote on election day. Citizens in the correct county, but in an incorrect precinct, would register and be offered a provisional ballot to vote. Mr. Fetig explained that the entire process would be done on paper, just as states such as Maine, Minnesota and Wisconsin have done for more than 30 years.

Senator McSorley invited public comment and many audience members spoke in favor of election day registration. Committee members clarified issues and asked questions of the speaker. The committee recessed for lunch at 12:30 p.m. and reconvened at 1:40 p.m.

Separation of Powers: Legislation and Rulemaking

Michael Browde, University of New Mexico School of Law professor, provided a historical perspective and discussed federal and state law concerning separation of powers and the line between legislation and agency rulemaking. Mr. Browde stated that all administrative agencies are creatures of statute and their mission is defined by the legislature. Legislation that is too general or too specific in granting rulemaking authority can be problematic. It is best to give the agencies sufficient standards and intelligible principles to work with. He discussed the nondelegation doctrine and its historical evolution in the federal system and talked about the scientific advancement and specialization that mandates more delegation of rulemaking authority in specialized areas. Representative Cervantes invited public comment and a discussion ensued between committee members and members of the public.

Use of Eminent Domain

J.D. Bullington and John Salazar, co-chairs of the Governor's Task Force on the Responsible Use of Eminent Domain, explained the recommendations made by the majority of the task force's members. The three current acts relating to eminent domain were studied and the task force recommends repeal of the Urban Development Law and the Community Development Law as they are either repetitive or no longer used. All necessary laws are included in the Metropolitan Redevelopment Code. Mr. Salazar and Mr. Bullington discussed specific task force recommendations, particularly the vote to remove the power of eminent domain. They discussed with committee members suggested language and changes to statute.

Bill Fulginiti, member of the task force, presented the minority report of the task force. He discussed procedural protections and also agreed with tightening up language requiring land to be "slum" or "blighted". He emphasized that it is necessary to maintain the power of eminent domain to be used as a last resort. Mr. Fulginiti also touched on the *Kelo* decision and stated how other states look to New Mexico as a model state in terms of eminent domain laws.

Former Lieutenant Governor Walter Bradley discussed his support for removing the power of eminent domain and stated his view of the abuse of that power by some local governments such as Rio Rancho, Albuquerque and Farmington. Committee and panel members discussed issues and proposed changes to the law.

Administrative Procedures Reform

T.J. Trujillo, lobbyist, described the Regulatory Justice Coalition that has formed to revise New Mexico's administrative procedures. He explained the current and varied status of New Mexico's administrative procedures. Administrative hearings and procedures have grown extensively and have become difficult to navigate for the average citizen and business owner. The process and rules are not transparent and accountability is minimal. There is also a lack of uniformity as the Administrative Procedures Act applies only rarely. Problems and obstacles with the current system were identified and other states' codes are being studied to help develop best practices for New Mexico. Mr. Trujillo told the committee to expect legislation addressing these problems in the 2007 legislative session. Committee members asked questions and clarified issues.

Recess

The committee recessed at 5:00 p.m.

Thursday, November 16

Senator McSorley, co-chair, and Representative Cervantes, co-chair, reconvened the committee at 9:10 a.m. and welcomed members and guests.

Report and Recommendations from the Governor's Task Force on Ethics Reform

Former Governor Garrey Carruthers and Suellyn Scarnecchia, co-chairs of the task force, went over membership and the general goals of the task force. Governor Carruthers described the precarious political situation of legislative salaries and stated that the task force recommends a legislative expense account as a compromise. Such a change would require a constitutional amendment and would reduce lobbyist support of legislative activities.

Dean Scarnecchia explained the task force's recommendation to create a State Ethics Commission that would confidentially investigate allegations of unethical conduct. She also relayed the recommendation of limiting gifts to legislators and a cap on gifts from lobbyists. Dean Scarnecchia also discussed the recommendation to limit campaign contributions and discussed the recommendation to change the state treasurer and state auditor from elected positions to governor-appointed positions that require qualifications for both positions. Dean Scarnecchia and Governor Carruthers discussed publicly financed campaigns for statewide elections and the trend of other states.

Committee co-chairs invited public comment and several members of the public voiced their opinions and answered questions. Committee members discussed and clarified issues with the co-chairs of the task force and members of the public.

Committee Business

Committee members voted unanimously to approve the minutes from the two previous meetings.

Governor's Legislative Proposals

John Wheeler, chief counsel for the Department of Public Safety, introduced seven pieces of draft legislation recommended by the governor. The first bill's intent is to exclude serious offenders from eligibility for lump-sum meritorious deduction awards. James Brewster, chief deputy general counsel for the Corrections Department, answered questions about the bill. Mr. Wheeler described the next piece of legislation, which would increase the alteration of the basic sentence when a firearm is used in the commission of a noncapital felony. Mr. Wheeler then discussed the next piece of legislation to provide for lifetime parole for some sex offenders and to create the crime of aggravated criminal sexual penetration. Sandra Gardner, domestic violence coordinator, described the domestic violence legislative drafts providing for graduated penalties and a substitute address for victims. Herman Silva, drug czar, explained the two bills on gang violence, one for recruitment penalties and the other to enhance sentences. He also discussed other initiatives such as a revolving fund for graffiti cleanup.

Committee members asked questions and clarified issues. Senator Sanchez requested a list of treatment providers and costs per client for the domestic violence bills. He also asked for a commitment to add an appropriation to pay for treatment. The committee recessed for lunch at 12:37 p.m. and reconvened at 2:15 p.m.

Uniform Law Commission

John P. Burton, uniform law commissioner, presented draft legislation to the committee. Mr. Burton's first bill seeks to prevent crooked agents from damaging a student athlete's eligibility by giving the athlete inappropriate gifts. The next bill provides for simple amendments to the Uniform Trust Code. Mr. Burton described the real property electronic recording bill as the most benign bill that simply allows county clerks to accept documents by fax or email attachment and allows for computerized records. The next bill amends limited partnership laws by providing a more flexible and stable basis for the organization of such partnerships. Mr. Burton's last bill was a uniform parentage bill that would facilitate modern methods for testing parentage.

Committee members asked questions and clarified issues with the draft legislation.

Mediation Procedures Act

David Levin, court alternatives director for the Second Judicial District, and Jocelyn Jores, Albuquerque's assistant city attorney, discussed draft legislation creating the Mediation Procedures Act. Mr. Levin explained that the use of mediation to resolve disputes is dramatically increasing and confidentiality laws are needed to protect communications. Mr. Levin described the contents of the bill, including the agreement to mediate and confidentiality exceptions.

The act would not require mediators to testify in court, but there would be some limited exceptions.

Committee members clarified issues and asked questions of the panel.

Children's Mental Health and Developmental Disabilities Act Revisions

Dorian Dodson, Children, Youth and Families Department secretary-designate, presented draft legislation to the committee regarding revisions to the Children's Mental Health and Developmental Disabilities Act. The overarching theme of the amendments is to allow all children receiving mental health services to have basic rights regardless of the setting, with greater protection provided to children dependent on their corresponding level of protection.

Committee members asked questions and clarified issues regarding the amendments.

Report from the Governor's Commission of the Welfare of Children of Jailed and Incarcerated Parents

Angie Vachio, co-chair of the commission, discussed two draft bills formulated from the recommendations of the commission. One is to enact a statute that would prohibit dependent children to be left unattended after a parent's or guardian's arrest, providing training and protocol for police to recognize children in these situations, establishing community-based child resource advocates who will work as a link between children and incarcerated parents and contact

visitation between children and their jailed parent or guardian. Ms. Vachio also touched on the cost of such programs.

Committee members asked questions, clarified issues and discussed possible solutions.

Recess

The committee recessed at 5:00 p.m.

Friday, November 17

Senator McSorley, co-chair, and Representative Cervantes, co-chair, reconvened the committee at 9:20 a.m. and welcomed members and guests.

Creating a Public Defender Commission

Homer Robinson, New Mexico Coalition for Justice project manager, explained the need to create a Public Defender Commission to oversee the Public Defender Department. Judge Henry Quintero, Sixth Judicial District, discussed the growing need for public defenders that is not being met because salaries are too low. Judge Quintero said his district has not attracted any full-time employees and all the public defenders are contract workers. He said many of them are only working for a couple of years' experience before going into private practice. Jacqueline Robbins, former chief public defender, described her experience in the public defender system. She emphasized her support of the proposed bill and offered suggestions to make the system function better.

Emmet Bondurant, Georgia Public Defender Standards Commission chair, recognized that the public defender system is a growing problem. He has been developing solutions since 1964. Georgia officials decided a Public Defender Commission would be the best solution. Mr. Bondurant described the Georgia commission to the committee. It is made up of appointed members by the governor, the lieutenant governor, the speaker of the house, and the senate pro tempore. When it began, it was funded primarily by the counties; however, the state is now appropriating \$40 million to the program. Revenue was created from a \$15.00 court filing fee and from fees on DWI and traffic fines. Mr. Bondurant's goal is to encourage career public defenders.

Representative Cervantes invited public comment and several members of the public spoke to the committee. Committee members discussed the composition of the commission in the proposed bill draft and requested that it be more bipartisan, as that would give it more credibility. Panel members agreed and said they would amend the proposed draft to reflect that suggestion.

Contract Attorney Fees in Death Penalty Cases

Melissa Hill, New Mexico Criminal Defense Lawyers Association, Indigent Defense Committee co-chair, discussed a bill draft concerning compensation for public defender contract attorneys handling death penalty cases. Currently, contract employees are receiving radically low compensation for representing clients eligible for the death penalty. Ms. Hill explained that if a contract attorney spends the average required amount of hours on a death penalty case, the

compensation would amount to about \$12.25 per hour. A commensurate attorney fielding the same case makes an average of \$125 per hour. Ms. Hill said an appropriation of \$800,000 would remedy this problem.

Committee members asked questions and clarified issues. Several members of the public spoke in support of the proposed bill.

School Zone Clarification in the Controlled Substances Act

Bennett Baur, New Mexico Criminal Defense Lawyers Association Legislative Committee co-chair, explained a small amendment to the Controlled Substances Act. This amendment is due to an oversight last session when the Senate Judiciary Committee excluded private property around a school zone from the enhanced penalty provision in the trafficking statute but forgot to do it in the distribution statute. Committee members asked questions and clarified issues. Several members of the public spoke in support of the proposed bill.

Qui Tam Legislative Proposal

Frances Williams, Region 7 Housing Authority commissioner, described the corruption she witnessed taking place in the Region 7 Housing Authority. Ms. Williams explained that there is no legislation in place that protects someone who exposes corruption. Ms. Williams discussed her personal story with the committee. She noticed there was a problem and tried to correct it by sending letters to the governor and alerting the press. Due to these actions, she was removed from her position and ostracized. Ms. Williams wants to prevent this from happening to someone else.

Maureen Sanders, qui tam attorney, described the qui tam legislative proposal. Qui tam is an abbreviation for the latin saying "he who sues on behalf of himself and the king". This legislation would allow a private individual to bring a lawsuit on behalf of the state for false claims against the state and, if successful, the individual can collect a percentage of the damages awarded. Ms. Sanders stated that the proposed legislation would probably not protect people in Ms. Williams' situation, but would provide protection against retaliation by employers.

Committee members sought public comment, asked questions and clarified issues.

Juvenile Continuum Grant Fund

Representative Jeannette O. Wallace and Representative Jim R. Trujillo proposed a bill that would create a Juvenile Continuum Grant Fund to help fund juvenile justice continuums around the state. The federal government is cutting funding that is badly needed by these successful grassroots programs. The bill repeals the Regional Juvenile Services Act that has funded these programs in the past but that is outdated. This bill is simply an update to reflect the reality of the types of programs operating around the state. Representative Trujillo said this bill would appropriate \$1 million to fund these continuum programs. Judge Barbara Vigil joined the panel and a discussion ensued with committee members about the appropriation. Members agreed that the appropriation should be increased to \$2 million.

Senator McSorley invited public comment and members asked questions and clarified issues.

Proposals of Insurance Fraud Penalties

Phyllis Bowman, New Mexico Insurance Fraud Bureau assistant prosecutor, and Morris Chavez, Insurance Division spokesperson, discussed draft legislation with the committee. The two proposed bills address criminal penalties for insurance fraud. One bill allows for a six-month aggregation of false insurance claims to determine penalties to toughen the penalty for those who make small but repeated false claims. The second bill expands the crime of racketeering to include false insurance claims. Ms. Bowman explained that this would allow people who maliciously commit insurance fraud to be formally charged with racketeering.

Representative Cervantes invited public comment and committee members asked questions of the panel and clarified issues.

Medical Marijuana

Reena Szczepanski, Drug Policy Alliance New Mexico director, presented a draft bill that would allow the use of medical marijuana for the treatment of certain conditions. The Department of Health would regulate and coordinate the program. An identification card would be issued with the legal amount that an eligible person is allowed to possess for treatment. Ms. Szczepanski emphasized that this is not an attempt to legalize marijuana. Eleven other states have passed similar bills. Ms. Szczepanski stated that the message that would be sent to children in this state would be one of compassion.

Theshia Naidoo, Office of Legal Affairs, Drug Policy Alliance staff attorney, emphasized that this proposed law would not interfere with federal law. State police powers allow states to decriminalize and limit the scope and reach of activities.

Committee members asked questions and clarified issues. Some members strongly support this issue, while others strongly oppose it.

Review of Proposed Legislation

A motion was made to endorse the 33 bills listed and provided in full in binders to committee members and individually to the public. All 33 bills were endorsed by the committee with Senator Rainaldi objecting to the endorsement of the medical marijuana and election day registration bills.

Committee members discussed sponsorship of the bills and assigned sponsors to most of the bills endorsed.

Co-Chairs Cervantes and McSorley thanked everyone for a very productive and enlightening interim. Committee members made comments and suggestions and discussed which prisons to visit next year, including the Santa Fe prison, Camino Nuevo, the Guadalupe County prison and the J.P. Taylor facility. The co-chairs invited public comment and several members of the public had questions about legislation.

Adjournment

The committee adjourned at 1:10 p.m.

Legislative Proposals

November 15, 2006

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

PROPOSED LEGISLATION - 2006 INTERIM

ADOPTED

1. Voting Machine Audit Procedures. (Unified Voters of New Mexico)
2. Uniform Athlete Agents Act. (Uniform Law Commission)
3. Uniform Trust Code. (Uniform Law Commission)
4. Uniform Real Property Electronic Recording Act. (Uniform Law Commission)
5. Uniform Limited Partnership Act. (Uniform Law Commission)
6. Uniform Parentage Act. (Uniform Law Commission)
7. Mediation Procedures Act. (Court Alternatives, Second Judicial District)
8. Guidelines and Training to Secure Child Safety Upon Parental Arrest.
(Commission on the Welfare of Children of Jailed and Incarcerated Parents)
9. Appropriation for Programs and Services for Incarcerated Parents and their
Children. (Commission on the Welfare of Children of Jailed and Incarcerated
Parents)
10. Create a Public Defender Commission. (NM Coalition for Justice)
11. Increase Contract Attorney Fees in Death Penalty Cases. (NM Criminal Defense
Lawyers Association)
12. Clarify School Zone in Controlled Substance Act. (NM Criminal Defense
Lawyers Association)
13. Juvenile Continuum Grant Fund. (Representative Jeanette Wallace)

14. Allow Aggregation of False Insurance Claims in Determining Penalty.
(Insurance Fraud Bureau)
15. Include Insurance Fraud in the Crime of Racketeering. (Insurance Fraud Bureau)
16. Medical Marijuana: Lynn and Erin Compassionate Use Act. (Drug Policy Alliance)
17. Create Additional Judgeships. (Judiciary)
18. Clarify Duty of Counties to Provide Court and District Attorney Facilities.
(Judiciary)
19. Increase Compensation to Jurors. (Judiciary)
20. Create a Judicial Performance Evaluation Fund. (Judiciary)
21. Create a Court of Appeals Building Commission. (Judiciary)
22. Judiciary Funding Requests:
 - a) Drug Courts;
 - b) Adult Mental Health Court in First Judicial District;
 - c) Pre-trial Services Program in the Eleventh Judicial District;
 - d) Restorative Justice Services in the Sixth Judicial District;
 - e) Municipal Court Support Division in the Administrative Office of the Courts; and
 - f) Background Investigations of Defendants in Bernalillo County.
23. Reimburse Counties for Incarceration of Felony Offenders. (NM Sentencing Commission)
24. Require an Appropriation to Accompany a Bill that Increases or Creates Periods of Imprisonment. (NM Sentencing Commission)
25. Reliable Eyewitness Identification Act. (NM Criminal Defense Lawyers Association)
26. Joint Memorial Opposing a National Identification Card and Rejecting REAL ID.

27. Create Task Force to Study Employment Barriers for Reentry of Offenders.
(Representative Mimi Stewart)
28. Joint Memorial Requesting the Corrections and Children, Youth and Families
Departments to Incorporate Restorative Justice Programs. (Senator Cisco
McSorley)
29. Election Day Registration. (Common Cause New Mexico)
30. Appropriation to the Civil Legal Services Commission. (Senator Cisco McSorley)
31. Extending the Corrections Population Control Act and Allowing for Election of
Chairperson. (Corrections Population Control Commission)
32. Qui Tam Proposal. (Maureen Sanders, Attorney)
33. Opiate Replacement Therapy Pilot Project. (Representative Mimi Stewart)